



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 28, 1994

Ms. Tracy R. Briggs
Assistant City Attorney
City of Houston
Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR94-708

Dear Ms. Briggs:

You have asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 28342.

The City of Houston (the "city") received the following request for information:¹

(1) Correspondence . . . and other written documents pertaining to the consideration by the [city] of a proposal for the razing and/or redevelopment of the coliseum and/or adjacent property near the current civic and convention center by . . . Maxxam/Mirage, or by any business entity or individuals associated with Maxxam Inc., Houston, and/or Mirage Resorts Inc., Las Vegas.

(2) Correspondence . . . and other written documents pertaining to the consideration by the [city] of a proposal for the razing and/or redevelopment of the coliseum and/or adjacent property near the current civic and convention center by Charles E. Hurwitz, Houston, and/or Stephen A. Wynn, Las Vegas, and/or any of their individual or business representatives or affiliates.

¹The requestor also asked for four other categories of documents. However, the city has informed the requestor that it has no documents that would be responsive to the request for those four categories of documents.

(3) Correspondence . . . and other written documents pertaining to the consideration by the [city] of a proposal for the development of a gaming casino in or near the City of Houston by . . . Maxxam/Mirage, or by any business entity or individuals associated with Maxxam Inc., Houston, and/or Mirage Resorts Inc., Las Vegas.

(4) Correspondence . . . and other written documents pertaining to the consideration by the [city] of a proposal for the development of a gaming casino in or near the City of Houston by Charles E. Hurwitz, Houston, and/or Stephen A. Wynn, Las Vegas, and/or any of their individual or business representatives or affiliates.

You have submitted to this office as responsive to the request documents labeled Exhibit Nos. 3, 4, 6, and 7.² You contend that these documents are excepted from disclosure under section 552.104 of the Government Code.

You state that the city sent out a request for proposals for lease and development of the Sam Houston Coliseum into an entertainment complex. Maxxam/Mirage was one of the developers who submitted proposals to the city. The city is negotiating with Maxxam/Mirage, but this office has been informed that a contract has not been awarded. You argue that because the negotiations with Maxxam/Mirage are not final and a contract has not been awarded or signed, release of the documents in Exhibit Nos. 3, 4, 6, and 7 would damage the city's interests and provide an advantage to Maxxam/Mirage and other developers. You contend that if the city and Maxxam/Mirage do not finalize a contract, release of the documents at issue would impair the city's ability to negotiate with other developers. You state that these documents provide "information that would allow [other developers] to charge higher prices for certain aspects of the contract." You add that release would also harm the city's current negotiating position with Maxxam/Mirage because some of the documents reflect the city's position on issues currently under negotiation. We have reviewed the documents at issue, which contain proposal information, comparisons of proposals, and other information related to the proposals and negotiations with Maxxam/Mirage.

Section 552.104 of the Open Records Act protects from required public disclosure "information which, if released, would give advantage to competitors or bidders." The purpose of section 552.104 is to protect a governmental body's interests in a commercial context by keeping some competitors or bidders from gaining unfair advantage over other

²You also submitted to this office documents labeled Exhibit Nos. 1, 2, and 5. Exhibit No. 1 is a copy of the requestor's letter to the city. Exhibit No. 2 is a copy of the city's response to the requestor. Exhibit No. 5 is an affidavit from the city's attorney relating to the request and the other exhibits. We assume that these documents were submitted for informational purposes and are not part of the documents at issue.

competitors or bidders. Open Records Decision No. 541 (1990) at 4. The documents in Exhibit Nos. 3, 4, 6, and 7 may be withheld from disclosure under section 552.104 because release at this time could result in an advantage to other competitors for the contract or damage the city's ability to obtain competitive proposals and prices.³ Section 552.104 does not, however, except bids or proposals from disclosure once the contract is in effect. Open Records Decision Nos. 306 (1982); 184 (1978). We are resolving this matter with this informal letter ruling rather than with a published open records decision.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/SG/rho

Ref.: ID# 28342

Enclosures: Submitted documents

cc: Mr. Jack H. Taylor, Jr.
7417 Whispering Pines Drive
Dallas, Texas 75248
(w/o enclosures)

³Because we have resolved this under section 552.104, we do not at this time need to address your arguments under sections 552.107, 552.110, and 552.111.